IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

NO MAGIC, INC.,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 2:17-cv-283
v.	§	
	§	
FUTUREX, L.P.,	§	**JURY TRIAL DEMANDED**
	§	
Defendant.	§	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff No Magic, Inc. files this Complaint against Futurex, L.P. for infringement of United States Patent No. 8,929,552 (the "'552 Patent").

I. NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendant's unauthorized use, sale, and offer to sell in the United States of products, methods, processes, services and/or systems that infringe Plaintiff No Magic, Inc.'s United States patent, as described herein.

II. PARTIES

2. Plaintiff No Magic, Inc. ("No Magic" or "Plaintiff") is a corporation organized and existing under the laws of the State of Wyoming, with its principal place of business located at One Allen Center, 700 Central Expressway South, Suite 110, Allen, Texas 75013.

3. No Magic is a twenty-one-year-old company whose primary focus is on the development of software products and solutions for a wide variety of customers. With over 10,000 customer companies, No Magic offers award-winning software products and services to a

wide variety of industries, including the energy, automotive, financial, logistics, telecommunications and space exploration (NASA) industries.

4. On information and belief, Defendant Futurex, L.P. ("Futurex" or "Defendant") is a Texas corporation with a head office at 864 Old Boerne Rd., Bulverde, Texas 78163. Futurex's registered agent for service of process is Brett W. Smith, 864 Old Boerne Rd., Bulverde, Texas 78163.

III. JURISDICTION AND VENUE

5. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§ 271, 281, 283, 284 and 285.

6. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant, and venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), (c), and 1400.

IV. PLAINTIFF'S PATENT

8. The '552 Patent, entitled "Electronic Information and Cryptographic Key Management System" issued on January 6, 2015. At a high level, the '552 Patent discloses systems and methods for the securement of electronic information. The information that is to be secured is associated with a cryptographic key. The key is then secured by encrypting it, saving it, restricting access to it, or by other means. A key management system may be tasked with securing the key and confirming that the key is indeed secured.

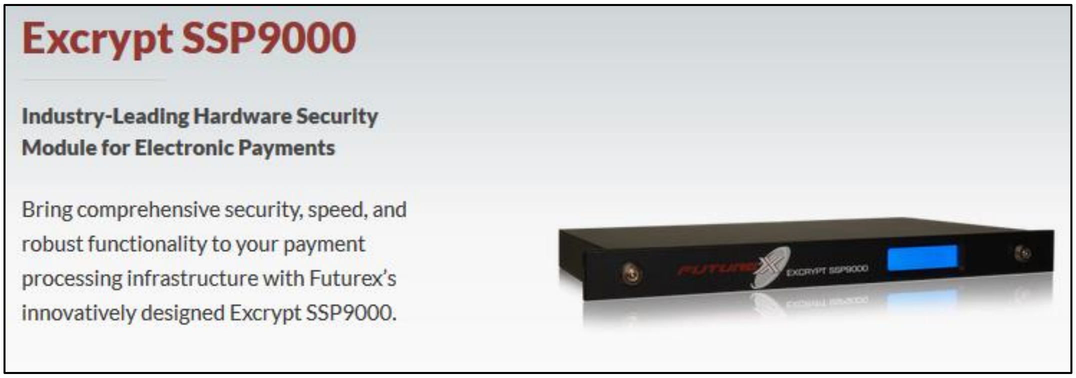
9. Once it is confirmed that the key is secured, a function is triggered that is responsible for, for example, enabling the encryption of electronic information, enabling the decryption of electronic information, enabling the transfer of electronic information, enabling the saving of electronic information, enabling electronic information to be read, enabling electronic

information to be rewritten, enabling electronic information to be created, enabling electronic information to be manipulated. The ’552 Patent discloses enhanced security measures such as using secure socket layer for transferring keys or information and requiring multiple simultaneous access requests from multiple administrators in order to allow access to secure electronic information. A true and correct copy of the ’552 Patent is attached as **Exhibit A**.

10. No Magic is the current assignee of the ’552 Patent, and has all rights to sue for infringement and collect past and future damages for the infringement thereof.

V. DEFENDANT’S ACTS

11. Defendant provides hardware, software, and services that secure electronic information via hardware security modules (“HSM”), key management servers (“KMS”), and cryptographic operations. For example, Defendant’s Excrypt SSP9000, Excrypt SSP9000 Enterprise, and Vectera series (including Vectera Core, Vectera Plus, Vectera Enterprise, and Vectera Galaxy) HSMs, along with Defendant’s KMES and RKMS key management servers, provide cryptographic processing, key protection, and key management. Defendant’s accused products associate a cryptographic key with secured information. This cryptographic key is further secured by encryption or other means. Once the securement of the cryptographic key is confirmed, the accused products enable subsequent cryptographic or data processing functions. General descriptions of the infringing functionality of Defendant’s accused products are depicted in the graphics below.


Excrypt SSP9000
Industry-Leading Hardware Security Module for Electronic Payments
Bring comprehensive security, speed, and robust functionality to your payment processing infrastructure with Futurex's innovatively designed Excrypt SSP9000.

https://www.futurex.com/products/excrypt-ssp9000

Excrypt SSP9000 Enterprise
Enterprise-Level Hardware Security
Protect your sensitive data and transactions with the industry-leading security and revolutionary functionality of the fastest payment HSM in the world

https://www.futurex.com/products/excrypt-ssp9000-enterprise

Vectera Series
Versatile Hardware Security Modules for Cross-Industry Applications
Deploy enterprise-class security with powerful, extensible HSM solutions for general purpose industries.

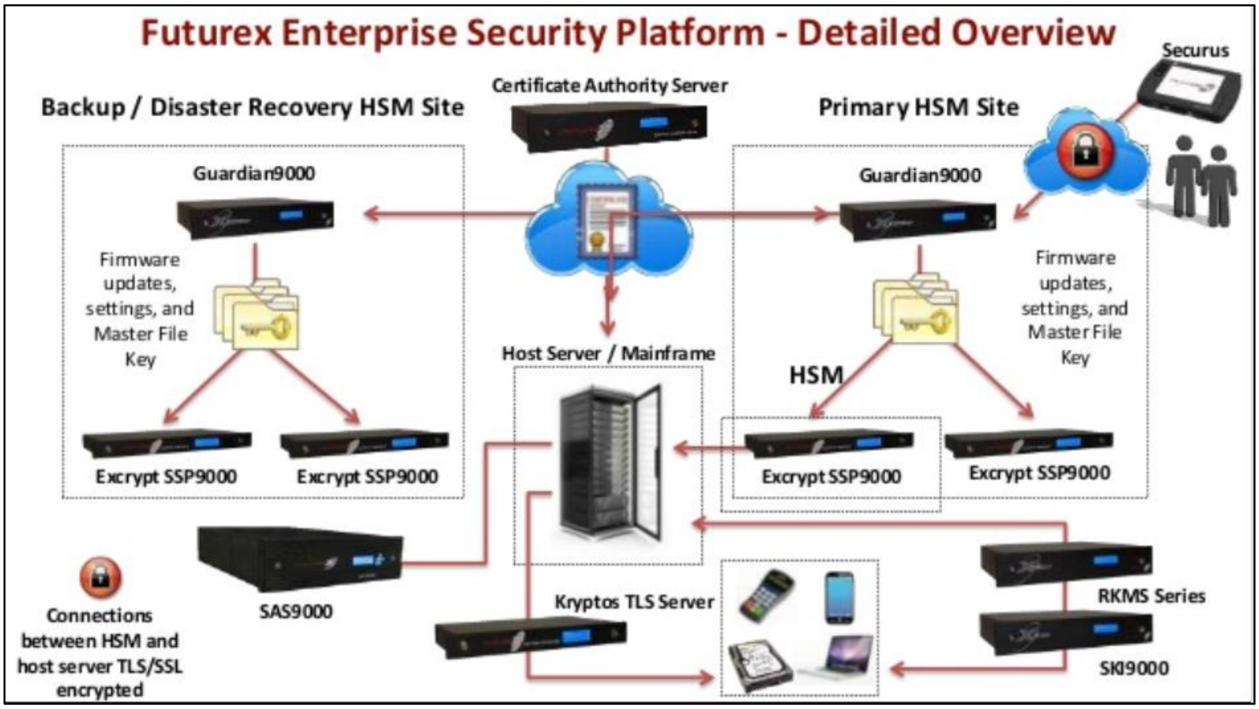
https://www.futurex.com/products/vectera-series

KMES Series
Enterprise Key and Certificate Management
Manage high volumes of symmetric and asymmetric keys across every aspect of their lifecycles, from cradle to grave
KMES Series

https://www.futurex.com/products/kmes-series

RKMS Series
A Complete Remote Key Management Solution
Automate the manual key replacement process, securely inject encryption keys, and manage everything from one central location
RKMS SERIES

https://www.futurex.com/products/rkms-series


Futurex Enterprise Security Platform - Detailed Overview
Securus
Certificate Authority Server
Backup / Disaster Recovery HSM Site
Primary HSM Site
Guardian9000
Guardian9000
Firmware updates, settings, and Master File Key
Firmware updates, settings, and Master File Key
Host Server / Mainframe
HSM
Excrypt SSP9000
Excrypt SSP9000
Excrypt SSP9000
Excrypt SSP9000
SAS9000
Connections between HSM and host server TLS/SSL encrypted
Kryptos TLS Server
RKMS Series
SKI9000

https://www.slideshare.net/stonegj/futurex

12. On information and belief, Defendant also implements contractual protections in the form of license agreements with its customers to preclude the unauthorized reproduction, distribution and modification of its software. Moreover, on information and belief, Defendant implements technical precautions to attempt to thwart customers who would circumvent the intended operation of Defendant's products.

13. Moreover, Defendant provides its customers with the accused products and software and instructs its customers to use the products and software in an infringing manner, including through its website at https://www.futurex.com/resource-library/ and https://www.futurex.com/support/category/xceptional-support.

14. In addition, Defendant knowingly, actively induced and continues to knowingly, actively induce (or is willfully blind to the) infringement of the '552 Patent within this District by making, using, offering for sale, and selling infringing products, as well as by contracting with others to use, market, sell, and offer to sell infringing products, all with knowledge of the '552 Patent, and its claims, with knowledge that its customers will use, market, sell, and offer to sell infringing products in this District and elsewhere in the United States, and with the knowledge and specific intent to encourage and facilitate infringing sales and use of the products by others within this District and the United States by creating and disseminating promotional and marketing materials, instructional materials, product manuals, and technical materials related to the infringing products. Defendant instructs their customers or users to configure, set up, and install the accused products such that they operate in an infringing manner. As seen in the graphics above, Defendant instructs users to deploy the accused products in a role where it will

function to provide a method of securing electronic information and a key management system. For example, Defendant generally describes the infringing functionality:

A hardware security module, or HSM, is a dedicated, standards-compliant cryptographic appliance designed to protect sensitive data in transit, in use, and at rest through the use of physical security measures, logical security controls, and strong encryption.

What HSMs Do

An HSM's core functionality is centered around encryption: the process by which sensitive data is rendered indecipherable to all except authorized recipients. HSMs also offer a secure way to decrypt data to ensure message confidentiality and authenticity.

Encryption is made possible through the use of encryption keys—randomly generated values that must be kept secret in order to protect the encrypted data. Because knowledge of the encryption key aids in decrypting information, it is vital that these keys are secured in a private environment.

Hardware security modules generate and store the keys used for encrypted communication among devices within a Secure Cryptographic Device (SCD), which is a far more secure method than solely using software. When information is sent to the HSM via a trusted connection, the HSM allows for the quick and safe encryption or decryption of that information using the appropriate key.

https://www.futurex.com/products/category/hardware-security-modules-hsm

Key Management Servers

Scalable, secure, and compliant solutions for enterprise-level key and certificate management

- Centralized control of the full key and certificate management lifecycle
- Scalable architecture for growing business environments
- Remote key distribution for client devices
- Easy and rapid integration into existing environments
- Support for all major key types and algorithms

https://www.futurex.com/products/category/key-management-servers

15. Moreover, Defendant knowingly contributed to the infringement of the '552 Patent by others in this District, and continues to contribute to the infringement of '552 Patent by others in this District by selling or offering to sell components of infringing products in this

District, which components constitute a material part of the inventions of the ’552 Patent, knowing of the ’552 Patent and its claims, knowing those components to be especially made or especially adapted for use to infringe the ’552 Patent, and knowing that those components are not staple articles or commodities of commerce suitable for substantial non-infringing use. The accused products are not staple articles or commodities of commerce because they are specifically designed to perform the claimed functionality. Any other use of the accused products would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental. Defendant has not implemented a design around or otherwise taken any remedial action with respect to the ’552 Patent.

VI. COUNT ONE

INFRINGEMENT OF U.S. PATENT NO. 8,929,552

16. Plaintiff No Magic realleges and incorporates herein paragraphs 1–15.

17. No Magic is the assignee and owner of all right, title and interest to the ’552 Patent. No Magic has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

18. The ’552 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

19. Defendant has directly infringed, and continues to directly infringe, one or more claims of the ’552 Patent in this judicial District and elsewhere in Texas and the United States.

20. Defendant has directly infringed, and continues to directly infringe the ’552 Patent, including but not limited to at least one or more of Claim 1, Claim 4, Claim 16, Claim 17, and claims dependent therefrom, by, among other things, making, using, offering for sale, selling, and/or importing, hardware security modules and key management servers that secure

electronic information and its associated cryptographic keys. Such devices include, but are not limited to, Excrypt SSP9000, Excrypt SSP9000 Enterprise, and Vectera series (including Vectera Core, Vectera Plus, Vectera Enterprise, and Vectera Galaxy) HSMs, along with KMES and RKMS key management servers, and all reasonably similar products of Defendant.

INDIRECT INFRINGEMENT (INDUCEMENT - 35 U.S.C. § 271(b))

21. Based on the information presently available to No Magic, No Magic contends that Defendant has indirectly infringed, and continues to indirectly infringe, one or more claims of the ’552 Patent by inducing direct infringement by third parties, specifically including end-users of the products accused of infringing the ’552 Patent, in this District and elsewhere in the United States.

22. On information and belief, despite having knowledge of the ’552 Patent, Defendant has specifically intended for persons who acquire and use the accused products, including without limitation end-users of the accused products, to acquire and use such devices in such a way that infringes the ’552 Patent, including but not limited to at least one or more of Claim 1, Claim 4, Claim 16, Claim 17, and one or more dependent claims. Defendant knew or should have known that its actions were inducing infringement.

23. Defendant has had knowledge of the ’552 Patent and the infringing nature of its activities at least as early as the date when No Magic effected service of this Complaint.

24. Direct infringement is the result of activities performed by third parties in relation to the accused products, including without limitation by end-users enabled and encouraged by Defendant to use the accused products in their normal, customary way to infringe the ’552 Patent.

25. With knowledge of the ’552 Patent, Defendant directs and aids third parties, including without limitation end-users of the accused products, to infringe the ’552 Patent by, among other things, (i) enabling a user of the accused products to use the products to support the securement of electronic information and its associated cryptographic keys, as claimed in the ’552 Patent; (ii) providing instructions (including, by way of example, solution briefs, sales sheets, case studies, best practices recommendations, technical documents, whitepapers, and other training located at https://www.futurex.com/resource-library/ and https://www.futurex.com/support/category/xceptional-support) to end-users of the accused products for using the products in their customary way; (iii) advertising the accused products’ support of the securement of electronic information and its associated cryptographic keys; and (iv) providing to third parties the products, software, and related equipment that may be required for or associated with infringement of the ’552 Patent, all with knowledge that the induced acts constitute patent infringement. Defendant possesses specific intent to encourage infringement by third parties, including without limitation end-users of the accused products. **Exhibit B** includes examples of Defendant’s instructions to users and technical implementers of the accused products regarding support of the securement of electronic information and its associated cryptographic keys.

INDIRECT INFRINGEMENT (CONTRIBUTION - 35 U.S.C. §§ 271(c) and/or (f))

26. Based on the information presently available to No Magic, Defendant has indirectly infringed, and continues to indirectly infringe the ’552 Patent, including but not limited to at least one or more of Claim 1, Claim 4, Claim 16, Claim 17, and one or more dependent claims, by contributing to the infringement of the ’552 Patent under 35 U.S.C. §

271(c) and/or 271(f), either literally and/or under the doctrine of equivalents, by selling, offering for sale, and/or importing into the United States, the accused products.

27. The accused products are specially adapted to the securement of electronic information and associated cryptographic keys in the manner specified in the claims identified above. Defendant thus knows that the accused products (i) constitute a material part of the inventions claimed in the ’552 Patent; (ii) are especially made or adapted to infringe the ’552 Patent; (iii) are not staple articles or commodities of commerce suitable for non-infringing use; and (iv) are components used for or in systems that are capable of the securement of electronic information and its associated cryptographic keys as claimed in the ’552 Patent.

28. On information and belief, Defendant intends to and will continue to directly and indirectly infringe the ’552 Patent. No Magic has been damaged as a result of Defendant’s infringing conduct described in this Count. Defendant is thus liable to No Magic in an amount that adequately compensates No Magic for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

VII. JURY DEMAND

29. Plaintiff No Magic demands a trial by jury of all matters to which it is entitled to trial by jury, pursuant to FED. R. CIV. P. 38.

VIII. PRAYER FOR RELIEF

WHEREFORE, No Magic prays for judgment and seeks relief against Defendant as follows:

A. That the Court determine that one or more claims of the ’552 Patent are infringed by Defendant, either literally or under the doctrine of equivalents;

B. That the Court award damages adequate to compensate No Magic for the patent infringement that has occurred, together with prejudgment and post-judgment interest and costs, and an ongoing royalty for continued infringement;

C. That the Court award such other relief to No Magic as the Court deems just and proper.

DATED: April 7, 2016

Respectfully submitted,

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